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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,238	09/24/2003	Dean W. Creighton	6123US	3563

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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12/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/669,238	CREIGHTON ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over van Lengerich et al (6149965) in view of Sander (6242033).

Van Lengerich et al disclose cooked cereal doughs, RTE cereal and method of making them. The cereal dough comprises starchy cereal components in amount of 40-99%, about 1-10 inulin, additional source of soluble fiber in amount of .1-6%, about 1-50% cereal bran fraction such as oat bran, wheat bran and additives such as sweetener in amount of .1-20%, .1-2% salt, vitamins, colors, flavors, high potency sweeteners etc... Possible supplemental soluble fiber source include high methoxyl pectin, cellulose flour, cellulose fiber. The inulin has an average DP of 9-10. Other B-2 fructofuransose material can also be includes. The flours can be whole flours or flour fractions and the cereal includes wheat, rice, corn, oat etc.. The dough comprises about 10-55% moisture. The inulin material can be added to the dry materials that are cooked or can be added subsequent to the formation of a cooked dough. The method of making the cereal comprises the steps of forming the cereal dough, forming the dough into individual pieces, and drying the pieces . The pellets can be partially dried to moisture content of 18-20% to form wet flakes having thickness of .015-.025 inch. The wet flakes can then be subjected to finish drying to a moisture content of 1-4%. The flakes are dried by toasting. The inulin can be worked into the dough in a pellet-forming device. The cereal pieces can be coated with sugar coating. The fat content of the cereal is less than 2%. Part of the inulin can be topically applied to form a topical coating. Then cereal contains up to about 3g/oz of fiber inulin. The pieces or pellets

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can be deep fat fried to form dried puffed fried product. (see columns 2-9 and the examples).

Van Lengerich et al do not disclose adding a plant protein in the amount claimed and the type of protein claimed, the particle size of the cereal bran as claimed, the thickness of the flakes as claimed, the fiber is carboxymethyl cellulose and the high potency sweetener as claimed.

Sander discloses a high protein cereal. The cereal has a minimum protein of 20%. The protein sources include soy protein, corn zein, protein from any recognized cereal sources and mixtures thereof. (see col. 2 lines 43-50)

It would have been obvious to one skilled in the art to add protein to the van Lengerich et al cereal as taught by Sander to make a high protein cereal to enhance the nutritional profile of the product. It would have been obvious to add protein in the amount taught by Sander or less depending on the nutrition desired. The proper amount can readily be determined through routine experimentation to obtain the most optimum product with respect to taste and nutrition. The type of protein selected would have been an obvious matter of preference depending on the taste, flavor and concentration of protein desired. It would have been obvious to one skilled in the art to determine the appropriate fiber size to give optimum texture. The size selected is an effective-result variable which would have within the determination of one in the art. It would have been obvious to use high potency sweetener to reduce the caloric content of the product. All the sweetener claimed are well known, it would have been obvious to one skilled in the art to select any known high potency sweetener. It would have been

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to make flakes in any desired thickness depending on the texture and crunchiness desired. Van Lengerich et al disclose cellulose fiber; thus, it would have been obvious to select any known cellulose and carboxymethyl cellulose is well known. The amounts of soluble and insoluble fiber fall within the ranges claimed; thus, it is obvious the ratio falls within the range claimed.

In the response filed 10/12/07, applicant argues the rejection is an obvious to try argument and the mere existence or use of an ingredient in one reference does not make it obvious to combine with another ingredient in another reference. This argument is not persuasive. The claims are combining known ingredients in the art without any unexpected results. Sander discloses a high protein cereal; the cereal has a minimum of 20% protein. Sander also teaches other additives such as betaglucans, soy beans, inulin, FOS and dietary fibers can be added. Many of the additives disclosed by Sander are fiber materials in addition to the teaching of adding dietary fiber. Thus, the high protein cereal of Sander also contains fiber; this indicates that fiber and protein are totally compatible in a cereal product. Thus, it would have been obvious to one skilled in the art to add a high amount of protein to the Van Lengerich et al cereal product when desiring a product having high fiber and protein content. Such product is more nutritious than the Van Lengerich et al product because it contains both high fiber and high protein. Adding ingredient for its known purpose would have been obvious to one skilled in the art. A combination of protein and fiber is suggested in the art because Sander discloses fiber additives can also be added to the high protein cereal. A 103 rejection must take into consideration the skill of one in the art and what would have

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been obvious to such person in view of the teaching of the prior art. Having the teaching of Sander it would have been obvious to one to make a cereal product containing both fiber and protein because such combination is taught in the prior art. Applicant argues that in the food arts, complex chemical interactions may take place during processing or cooking which give a final product certain characteristics. This might or might not be true; however, applicant has not shown evidence of any chemical interaction that would be detrimental to the product containing both fiber and protein. Applicant states Sander actually teaches away from the claimed invention because the highest amount of dietary fiber in any of the examples in Sander is 8.7%. Sander does not limit the amount of fiber; the examples are only exemplified embodiments of the reference ; they do not represent the whole disclosure. Applicant argues Van Lengerich et al does not mention the desire for any protein at all. While Van Lengerich et al do not specifically mention protein, they do disclose on col. 6 lines 15-17 " the cereal dough composition can additionally include a variety of materials designed to improve the aesthetic, organoleptic or nutritional qualities of the cereal". The addition of protein will enhance the nutritional qualities of the cereal and this disclosure would suggest to one skilled in the art to add protein material as taught by Sander when desiring to enhance the nutritional qualities of the cereal product. Applicant makes comments about the conclusory statements concerning particle size, flake thickness and sweetener type. The rejection set forth the reason for why one would use certain particle size, thickness and sweetner type; they are not conclusory statements. For example, it is stated that it would have been obvious to use high potency sweetener to reduce the caloric content

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of the product. Van Lengerich et al disclose to add sweetener agent, it would have been to substitute high potency sweetener such as aspartame for regular sweeteners such as brown sugar, fructose, etc.. to obtain a sweet product without the caloric content of regular sweeteners. Applicant does not argue the position.

Applicant's arguments filed 10/12/07 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 11, 2007

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700